

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Reexamination of Roaming Obligations of)	WT Docket No. 05-265
Commercial Mobile Radio Service Providers)	
)	
Automatic and Manual Roaming Obligations)	
Pertaining to Commercial Mobile Radio Services)	WT Docket No. 00-193
)	

REPLY COMMENTS OF EDGE WIRELESS, LLC

Edge Wireless, LLC, (collectively, “Edge”), a qualified entrepreneur operating primarily in rural areas, hereby submits its Reply Comments in the captioned proceeding. By these Reply Comments, Edge urges the Commission to maintain in place its current, largely de-regulatory and market-based, rules and policies regarding roaming. Given the way in which the wireless market place has flourished under the current regime, there is no reason to change. More importantly, any new mandatory roaming obligations would present a genuine risk of frustrating the Commission’s goal of high quality service – especially in rural areas.

I. STATEMENT OF INTEREST

Edge is a PCS licensee that provides premier voice and data wireless service in southern Oregon, northern California, southeastern Idaho and Jackson, WY.¹ It operates state of the art TDMA and EDGE-enabled GSM/GRPS systems. With over 300 cell sites now covering its home service areas, Edge continues to build additional sites to enhance coverage and reliability.

¹ Edge’s licensed market include, but are not limited to, rural areas such as Idaho Falls, ID, Twin Falls, ID, Pocatello, ID and Medford, OR.

It is committed to bringing its 140,000 customers a strong, dependable network, affordable rate plans and a wide selection of up-to-date phones and devices.

Commission records reflect that Edge, its corporate affiliates, and its principals, have a long and distinguished history in wireless communications. Edge's CEO and founder, Mr. Wayne Perry, has been actively involved in a host of executive positions since the inception of cellular service. Mr. Perry's wireless career commenced with the McCaw Communications family of licensees; continued in place through much of the transition to AT&T Wireless; and then expanded with the start of Edge. Throughout that time, Mr. Perry (and, through Edge, his key executive team) has contributed to, and observed the evolution of roaming, from a nascent service to a highly sophisticated, virtually problem-free, service that has greatly benefited the American consumer and enhanced the American economy. As such, Edge is uniquely positioned to provide comment on the NPRM.

II. BACKGROUND

From the inception of cellular, the Commission has properly recognized roaming to be a critical element of advanced two-way communications systems.² Subsequently, and repeatedly, the Commission has assessed the status of roaming and the most appropriate way in which to facilitate its efficient use.³ By that process, the Commission wisely determined that, in order to

² See, e.g. *Cellular Communication Systems*, 86 FCC 2nd 469 (1981), and 47 C.F.R. § 22.911(c), adopted therein, which provides, in pertinent part, that "base stations must also render service to properly licensed roamers." *Id.* at 572.

³ See, e.g. *Equal Access and Interconnect Obligations Pertaining to Commercial Mobile Radio Services*, 9 FCC Rcd 5408 (1994).

best further the goals of the Communications Act,⁴ the Commission should simply require that CMRS carriers provide manual roaming.⁵ If any further requirements should be imposed, they should be short term in nature with a duration of five years or less.⁶ In the process, the Commission wisely determined that “regulatory caution” was the most appropriate course of conduct, given “uncertainties concerning technological development” ... and “the likelihood that market forces would adequately promote the availability of roaming” *Id.*, at 9465. This wise policy, while promulgated by the Commission, was seemingly inspired by the Congressional directive in the Telecommunications Act to create a “pro-competitive deregulated national policy framework.”⁷

In 2000, the Commission once again addressed roaming, and again determined to limit its regulation of roaming to “manual” roaming.⁸ At the same time, the Commission instituted yet another examination of the most appropriate scope for roaming regulation.⁹ There, once again, the Commission stopped short of proposing to extend its manual-only roaming obligation. In so

⁴ 47 U.S.C. § 151 et seq. (the “Communications Act” or the “Act”). Among the specific charges that the Commission complied with in limiting its regulation of roaming – all of which remain fully applicable today, are “to promote competition and reduce regulation in order to secure for American Telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” See generally, *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 stat. 56 (1996) (the “Telecommunications Act”).

⁵ *Second Report and Order and Third Notice of Proposed Rulemaking*, CC Docket No. 94-54, 11 FCC Rcd 9462,9464 (1996).

⁶ *Id.*

⁷ *Telecommunications Act*, H.R. Rep. No. 104-458, at 1 (1996)

⁸ *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, in CC Docket No. 9454, 15 FCC Rcd 15975, 15979-81 (2000).

⁹ *2000 CMRS Roaming NPRM*, 15 FCC Rcd 21628 (2000).

continuing to properly apply regulatory caution, the Commission properly set forth the applicable standard to be applied to any consideration of expanding its regulation of roaming: “We do not believe we should adopt any automatic roaming rule unless it is clear that providers’ current practices are unreasonably hindering the operation of the market to the detriment of consumers.”¹⁰ After compiling a voluminous record in that proceeding, the Commission apparently found nothing that would cause it to believe that the high threshold necessary to justify increased regulation had been met. Accordingly, when the Commission initiated this proceeding, it also closed prior proceedings without extending its regulation of roaming.

At the Comment stage of this proceeding, twenty-two parties filed. Not unexpectedly, the comments fell largely into two discrete camps, one being supportive of market forces and another urging increased regulation to foster their competitive position.

III. DISCUSSION

In the NPRM, the Commission invited input on a number of issues. Below, Edge responds on several issues

A. Manual Roaming

Consumers generally benefit when market forces, not government regulation, determine what services consumers should receive. In the particular instance of manual roaming, it is a regulation that has outlived its usefulness. Most certainly, it is not heavily utilized today. Although, it is largely carrier-neutral in that it does not bring with it much of the competitive

¹⁰ *Id.*, at 21635. See also comments referenced at n. 51, that explained that “an automatic roaming rule would constitute an unwarranted departure from our general rule of allowing market forces, instead of regulation to shape development of wireless and a competitive market place.”

disadvantages that would be associated with more extensive roaming regulations, it would be contrary to the Telecommunications Act. (See n. 7, *supra*.) Nevertheless, should this requirement remain in place, the Commission should implement its prior proposal to have the regulation automatically sunset within five years. Edge thus supports the comments of Cingular and T-Mobile USA urging such relief.

B. Automatic Roaming

1. Market Forces Serve to Keep Roaming Competitive.

Industry experience unquestionably demonstrates roaming to be vibrant and to add to the already competitive nature of the wireless industry. Today, there are literally thousands of intercarrier roaming agreements in effect. Most certainly, there is nothing to suggest, much less demonstrate, as the Commission has stated must be shown before further regulation can be justified – that current practices are in any way “hindering market forces to the detriment of consumers.” Indeed, as the Commission’s most recent report on the state of competition in the wireless industry confirms, “roaming rates have declined as nationwide carriers continue to expand into smaller communities.”¹¹ Indeed, while total roaming minutes of use have skyrocketed and total industry roaming revenues have increased marginally, over the past year the contribution of roaming revenues to total revenues has dropped by 5% in the past year (from 4.3% to 4.1%).¹² Significantly, this is only the most recent proof of a continuing trend of reduced roaming rates. In the two immediately preceding years, roaming payments, as measured

¹¹ *Tenth Report on the State of Competition in the CMRS Market*, 2005 WL 2428465.

¹² *Id.*

as a component of overall wireless revenues, decreased by approximately 16% annually. During the last five years, as roaming usage has so, and they are down by more than 50% over the last five years.¹³ These payment reductions demonstrate the applicability of market forces, and unquestionably inures to the benefit of consumers.

The competitive nature of the roaming market is further illustrated by the widespread availability of roaming agreements. Rural carriers generally have no problem obtaining agreements that permit their customers to roam in larger markets; in fact, the agreements tend to be reciprocal because the larger carriers want their customers to be able to roam in the rural markets as well. Notably, prices for such reciprocal roaming services are reciprocal, and often lower than roaming rates in rural areas.

Part of Edge's strategic imperative has been to build a superior network with extensive coverage in rural areas. This serves two purposes: (1) it provides Edge customers with state-of-the-art wireless coverage in many areas that aren't otherwise served, and (2) it provides Edge with an enviable footprint when other carriers are looking for roaming partners in Edge's territory. Such superior service in rural areas serves as an incentive to larger carriers to enter into roaming agreements with carriers such as Edge. (See Section III 13(3), below Edge's strategy is not proprietary and, thus, other rural carriers who want to benefit from beneficial roaming agreements are incentivized, as Edge was, to build out rural areas that otherwise would not have

¹³ *Ninth Report on the State of Competition in the CMRS Market*, 19 FCC Rcd 20,597 (2004)

wireless service. This fosters the Commission's goal to provide quality service to "all Americans in all areas of the country 'so far as possible'."¹⁴

Several commenting parties observed the competitive nature of the industry, and particularly roaming. See, e.g. *Sprint Nextel Comments* at 4-6; *Comments of Cingular Wireless, LLC* at 26; *Comments of Verizon Wireless*, at 7-14; and *Economic Analysis of Gregory L Rosston*, at 3, attachment to the Sprint Nextel Comments. See also *Comments of Centennial Communications Corp.*, at 12, noting that, "things are generally working well." Edge steadfastly agrees with those comments.

2. There Have Been Very Few Complaints Regarding Roaming Services.

When the Commission initially elected not to mandate automatic roaming, or to otherwise over-regulate the service, it did so in part out of a recognition that the Commission has in place formal and informal complaint processes applicable to roaming issues.¹⁵ The volume of complaints filed regarding a particular service is generally viewed as an indication of whether there are problems with that service. In the case of roaming, Commission records reflect a genuine paucity of complaints. Indeed, review of the Commission's publicly available files, and its website, reveal that no formal complaints regarding roaming are currently pending. This

¹⁴ Report and Order and Further Notice of Proposed Rule Making, WT Docket No. 02-381, 19 FCC Rcd 19,078, 19,079 (2004).

¹⁵ Roaming is unquestionably a common carrier service. 11 FCC Rcd at 9463-71. Pursuant to Section 201 of the Act, common carriers are obligated to provide service "upon reasonable request." 47 U.S.C. § 201(a). And 47 U.S.C. provides that complaints may be filed with the Commission. The Commission has formally recognized all of this. See NPRM generally.

absence of formal complaints suggests strongly that the current system continues to work generally well.

3. Forced Roaming Would Serve Only to Thwart Market Forces.

From the commencement of advanced wireless systems, the Commission has properly focused on enhancing facilities-based competition. See *Cellular Communications Systems*, 86 FCC 2d 469, where the virtue of such competition was stressed. See also, *Second Report and Order*, in GN Docket No. 90-314, 8 FCC Rcd 7700 (1993), where the benefit to consumers increased facilities-based competition through PCS licensing was similarly recognized. As demonstrated below, forced roaming agreements would frustrate such competition.

Edge is primarily a rural carrier. In virtually all of the markets in which it operates, there are five or more carriers. In many, Edge was the fifth carrier to enter the market. Edge's strategy for operating under these competitive situations has been simple: build better systems and, as a result, earn customers, both home and roaming ones! Towards that end, Edge has invested as much, or more than, any other carrier in terms of capital in expenditures per unit of population base in order to build state-of-the-art systems in rural areas. Virtually all of its network is already 2.5G and will soon be 3G. A cornerstone of its business strategy is to provide wide area, quality service, even in areas that are sparsely populated. In considerable part, this strategy is designed to provide Edge with an advantage over its competitors – and better service for its customers.

This also provides an incentive for others carriers to enter into roaming agreements with Edge. To illustrate, the high quality service and extensive footprint that Edge offers in rural areas is highly attractive to carriers that are not in Edge's markets. It provides

them with an opportunity extend the service areas available to their customers and to concentrate their investments in the other markets.

Were the Commission to mandate roaming, it would benefit only carriers who have opted to invest less on their systems. It would effectively penalize carriers such as Edge. Most certainly it would not foster competition. Critical incentives to providing such quality service in rural areas would be removed, in at least two ways. First, if Edge were required to provide roaming to other in-market operators, those other operators (and, indirectly, Edge) would have less incentive to expand to difficult-to-serve areas. Moreover, Edge would be financially and competitively penalized for providing service to such areas, if it elected to do so, while its competitors could simply “cream skim” the more lucrative and easy-to-serve customers and service areas. Second, mandated roaming would remove a considerable benefit that Edge would otherwise have as it negotiates intercarrier agreements with carriers in larger markets. Specifically, Edge’s superior small market coverage can now be leveraged to provide Edge with benefits from its industry partners that would not otherwise be available and can result in its customers reaping similar benefits when they travel to markets served by Edge’s industry partners. Were the Commission to mandate roaming, these incentives would erode, or disappear. As a result, only competitors – and not competition – would be advantaged by the Commission expanding its regulation to include mandatory automatic roaming. Most certainly, the result

would conflict squarely with the Commission’s clearly articulated goals (and obligations) to enhance service availability, choice and quality in rural areas.¹⁶

Both smaller and large carriers appreciate this point. See *Comments of North Dakota Network Company*, at 3, where NDNC observes that a mandated roaming obligation “would create a disincentive for small or rural carriers to build out their networks.” See also *Comments of Cingular*, to the same effect.

4. The Professed Concerns of Small Carriers are Misplaced.

The NPRM provides certain accounts of professed concerns by smaller carriers, ranging from pricing disadvantages to non-availability of roaming agreements. As a small carrier itself, Edge feels compelled to address certain of these issues. First, with respect to service availability, roaming is no different from any other form of competitive attribute that a carrier has to offer. If a small carrier builds a high quality, competitive system in its market, larger market carriers will want to enter into agreements with it in order to obtain for the benefit of their customers access to those systems – and automatic roaming will remove any incentive to improve its system. With respect to pricing matters, there are any number of considerations that may justify pricing differentials and, so long as the market is competitive, any imposition of a “one size fits all” regime would both violate established Commission and court precedent and invite all manner of unknown and unknown-able mischief. See *Orloff v FCC*,¹⁷ where the D.C. Circuit properly

¹⁶ Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 02-381, 19 FCC Rcd 19078 (2004)

¹⁷ 352 F.3d 415 (D.C. Cir. 2004)

affirmed an FCC ruling that bargaining and price differentials, even for seemingly similar services, are a “normal feature of many competitive markets” which enable consumers to obtain the “full benefit of competition by playing competitors against each other.”

5. Additional and Unnecessary Regulation Would Add Needlessly to Industry Costs.

As the Commission has properly recognized, “all regulation ... necessarily implicates costs, including administrative costs, which should not be imposed unless clearly warranted.”¹⁸ In the instance of roaming, the added costs, while possibly difficult to quantify, are unquestionably real – and significant. For example, the resources required to negotiate countless agreements would itself squander significant resources that would be better used to serve the public. In additions, the inclusion of necessary data for the added roaming arrangements could well strain switching capacity – or require increased switch capacity. See, e.g., *Comments of Cingular*, at 27. There are, of course, countless other unforeseen, but real, costs of added regulation – all of which are in addition to the competitive ones discussed above. For example, see *Comments of T-Mobile USA*, at 19, wherein it is noted that mandatory roaming would reduce carriers’ technological flexibility.

IV. CONCLUSION

The wireless industry is, and has been for many years, a market-driven competitive success story. Incentives abound to build better systems for the benefit of consumers. Consumers have welcomed such service by subscribing in record breaking numbers and by

¹⁸ *First Report and Order*, in CC Docket No 94-54, 11 FCC Rcd 18455,18463 (1996)

reducing market churn, and they have benefited from the associated ever-decreasing prices for services.

Given that the Commission (and Congress, through the Telecommunications Act) have properly framed the issue so that increased regulation will be deemed appropriate only if market forces do not work, and based upon the showing herein that they are working quite well, the Commission should reject the temptation to fall into an ultra-regulatory mode and attempt to fix that which simply is not broken. This is especially the case here, because added regulation would effectively remove a meaningful basis for competition among carriers.

Respectfully Submitted,

EDGE WIRELESS, LLC

_____/s/
By: Wayne Perry
Its Manager

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